

1 ROB BONTA
Attorney General of California
2 SARA J. DRAKE
Senior Assistant Attorney General
3 T. MICHELLE LAIRD
Supervising Deputy Attorney General
4 JEREMY STEVENS, State Bar No. 313883
TIMOTHY M. MUSCAT, State Bar No. 148944
5 Deputy Attorney General
1300 I Street, Suite 125
6 P.O. Box 944255
Sacramento, CA 94244-2550
7 Telephone: (916) 210-7779
Fax: (916) 323-2319
8 E-mail: Timothy.Muscat@doj.ca.gov
Attorneys for Defendants

9
LAW OFFICE OF FRANK LAWRENCE
10 FRANK LAWRENCE, State Bar No. 147531
ZEHAHA ZEVIT, State Bar No. 230600
11 578 Sutton Way, No. 246
Grass Valley, CA 95945
12 Telephone: (530) 362-8434
E-mail: Frank@FrankLawrence.com
13 *Attorneys for Plaintiff*

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15 IN THE UNITED STATES DISTRICT COURT
16 FOR THE EASTERN DISTRICT OF CALIFORNIA

17
18 **BISHOP PAIUTE TRIBE, a federally**
19 **recognized Indian tribal government,**

20 Plaintiff,

21 v.

22 **GAVIN NEWSOM, Governor of the State**
23 **of California, and the STATE OF**
CALIFORNIA,

24 Defendants.
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27
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1:20-CV-01318-AWI-SKO

**STIPULATION FOR GRANTING
SUMMARY JUDGMENT IN
PLAINTIFF'S FAVOR AND ORDER
REQUIRING PARTIES TO PROCEED
TO THE REMEDIAL PROCESS IN 25
U.S.C. § 2710(d)(7)(B)(iii)-(vii)**

On July 28, 2022, the Ninth Circuit issued its published decision in *Chicken Ranch Rancheria of Me-Wuk Indians v. California (Chicken Ranch)*, 42 F.4th 1024 (9th Cir 2022). That case involved whether the State of California (State) had failed to negotiate in good faith with five California tribes seeking new tribal-state compacts required by the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. §§ 2710-2712, 18 U.S.C. §§ 1166-1167, in order for the tribes to conduct what IGRA defines as “class III gaming.” The court held that “IGRA strictly limits the topics that states may include in tribal-state Class III compacts to those directly related to the operation of gaming activities.” *Chicken Ranch*, 42 F.4th at 1029.

The *Chicken Ranch* court ruled that the State failed to engage in good-faith negotiations with five plaintiff tribes under IGRA by insisting on provisions not directly related to the operation of class III gaming activities. The specific provisions addressed by the Ninth Circuit concerned tribal recognition of spousal and child support orders for all gaming facility employees, environmental review and mitigation for a broadly defined set of projects, and broad tort claims coverage. *Chicken Ranch*, 42 F.4th at 1037-39. The court held that under 25 U.S.C. § 2710(d)(3)(C)(vii), “these family, environmental, and tort law provisions are not ‘directly related to the operation of gaming activities.’” *Id.* at 1038.

Similar to the plaintiff tribes in *Chicken Ranch*, plaintiff Bishop Paiute Tribe, a federally recognized Indian tribe (Bishop), is a former member of the Compact Tribes Steering Committee (CTSC). On August 19, 2014, the CTSC, a coalition of twenty-eight federally recognized California Indian tribes, wrote to inform the State of CTSC’s formation and its desire to begin the negotiation process for new class III gaming compacts. Bishop was a member of CTSC in 2014, and remained a member until July 6, 2020. As such, Bishop shares the same record of negotiations (RON) with the plaintiff tribes in *Chicken Ranch* from August 19, 2014, through July 6, 2020.

Bishop withdrew from negotiations with the State and filed its Complaint for Declaratory and Injunctive Relief (Complaint) on September 15, 2020. (Doc. 1.) The Complaint’s claim for relief alleged that the State failed in its duty to negotiate in good faith under IGRA. (*Id.* at 18-37.) Regarding this claim in Bishop’s Complaint, on June 15, 2021, Bishop and the State and

1 Governor Gavin Newsom (State Defendants) filed cross-motions for summary judgment. (Docs.
 2 21 & 22.) In these motions, the parties disputed whether the State failed in its duty under IGRA
 3 to negotiate in good faith. These motions included disputes over whether the State's proposed
 4 provisions regarding tort liability and remedies (Complaint, Count Eight), tribal recognition of
 5 employee spousal and child support orders (Complaint, Count Ten), and environmental review
 6 and mitigation (Complaint, Count One), exceeded the permissible scope of negotiations under
 7 IGRA, 25 U.S.C. § 2710(d)(3)(C)(i)-(vii), and thus constituted a failure by the State to negotiate
 8 in good faith. In addition, these motions included disputes over other provisions proposed by the
 9 State. Some of those provisions were at issue in *Chicken Ranch* but were not ruled upon by the
 10 Ninth Circuit in *Chicken Ranch*, while other provisions were not specifically at issue in *Chicken*
 11 *Ranch*.

12 In support of their cross-motions for summary judgment, on June 15, 2021, the parties
 13 each filed an identical Joint Statement of Undisputed Facts (JSUF). (Docs. 21-2 & 22-4.) The
 14 stipulated facts in the JSUF included facts from the RON based upon CTSC compact negotiations
 15 over tort claims coverage (JSUF, Nos. 16, 21, 44, 46, 50-51, 58, 99, 108, 146-49, 168, 175, 186 &
 16 199), employee spousal and child support orders (JSUF, Nos. 49-52, 101, 158-61, 170 & 172),
 17 environmental review and mitigation (JSUF, Nos. 16, 21, 23, 45, 96, 108, 129-33, 164 & 199),
 18 and the other provisions at issue in the cross-motions for summary judgment (*e.g.*, JSUF, Nos. 16,
 19 21-24, 26, 34, 36, 46-47, 49-52, 56, 58, 60, 65-66, 74, 78 & 101).

20 While Bishop and the State Defendants' cross-motions for summary judgment remain
 21 pending before the Court, the Ninth Circuit's *Chicken Ranch* decision resolved the central legal
 22 issues under IGRA in these motions – *i.e.*, generally the extent to which 25 U.S.C.
 23 § 2710(d)(3)(C)(i)-(vii) limits the permissible scope of compact negotiations and whether the
 24 State's insistence on compact provisions concerning tort claims coverage, employee spousal and
 25 child support orders, and environmental review and mitigation constituted a failure to negotiate in
 26 good faith.

27 Based on *Chicken Ranch*'s key holdings, the largely identical RONs in both this case and
 28 *Chicken Ranch*, and the parties' JSUFs, the parties now request the Court, pursuant to this

1 stipulation, grant summary judgment in Bishop’s favor on its first claim for relief that the State
2 failed to negotiate in good faith as required by IGRA because it sought “to negotiate for compact
3 provisions that fall well outside of IGRA’s permissible topics of negotiation,” *Chicken Ranch*, 42
4 F.4th at 1040, namely, tribal recognition of state court spousal and child support orders,
5 environmental review and mitigation for a broadly defined set of “projects,” and broad tort claims
6 coverage based upon California law, and order the parties to proceed pursuant to the remedial
7 process set forth in IGRA, 25 U.S.C. § 2710(d)(7)(B)(iii)-(vii).

8 Dated: December 6, 2022

Respectfully submitted,

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10 ROB BONTA
Attorney General of California
11 SARA J. DRAKE
Senior Assistant Attorney General
12 T. MICHELLE LAIRD
Supervising Deputy Attorney General
13 JEREMY STEVENS
Deputy Attorney General

14 /s/ Timothy M. Muscat

15 TIMOTHY M. MUSCAT
16 Deputy Attorney General
Attorneys for Defendants

17
18 Dated: December 6, 2022

Respectfully submitted,

19 LAW OFFICE OF FRANK LAWRENCE

20 /s/ Frank Lawrence (as authorized on
21 12/6/22)

22 Frank Lawrence
23 Attorneys for Plaintiff
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ORDER

Based upon the above stipulation by the parties, summary judgment is granted in Bishop's favor on the claim for relief in its Complaint, consistent with the Ninth Circuit's decision in *Chicken Ranch Rancheria of Me-Wuk Indians v. California (Chicken Ranch)*, 42 F.4th 1024 (9th Cir. 2022), and the undisputed facts agreed upon by the parties.

Accordingly, the parties ARE HEREBY ORDERED to proceed pursuant to the remedial process set forth in IGRA, 25 U.S.C. § 2710(d)(7)(B)(iii)-(vii).

IT IS SO ORDERED.

Dated: January 26, 2023



SENIOR DISTRICT JUDGE